

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

HAZEL M. ROBY, as Administratrix of
the Estate of RONALD TYRONE
ROBY, Deceased,

Plaintiff,

v.

BENTON EXPRESS, INC., et al,

Defendants.

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CIVIL ACTION NO.: 2:05CV494-MHT

MOTION REQUESTING APPOINTMENT OF GUARDIAN AD LITEM
AND PRO AMI HEARING

COMES NOW the Defendant, Benton Express, Inc., and hereby requests that the Court appoint a guardian ad litem for the minor children of Ronald Tyrone Roby and that the Court conduct a Pro Ami hearing regarding the settlement of this action. In support thereof, Defendant states as follows:

1. This case is a wrongful death action pursuant to Section 6-5-410 of the Code of Alabama (1975) involving the death of Ronald Tyrone Roby on April 11, 2005.
2. The case has been prosecuted by Hazel M. Roby as the Administratrix of the Estate of Ronald Tyrone Roby. Mrs. Roby is the duly appointed personal representative of the Roby estate.
3. The case has been settled.
4. To Defendant's knowledge, Ronald Roby had three minor children at the time of his death, namely Deborah Roby, Charonta Roby, and Kimbreuna Roby.
5. The proceeds of an action under Alabama's wrongful death statute must be distributed according to the statute of distributions. Ala. Code 6-5-410(c) (1975). Under the

statute of distributions, any of Ronald T. Roby's issue is entitled to a share of the settlement proceeds of this case. See Ala. Code 43-8-41, 43-8-42 (1975).

6. As the minor issue of Ronald T. Roby, Deborah Roby, Charonta Roby, and Kimbreuna Roby are entitled to a share of the settlement proceeds.

7. Where a minor is involved, the Alabama courts have held that a pro ami hearing is necessary when a minor is a party to the action to determine whether or not the settlement is in the best interests of the minor. See Abernathy v. Colbert County Hospital Board, 388 So. 2d 1207 (Ala. 1980). Although no minors are parties to this action, the parties believe a Pro Ami hearing is in the best interest of the children.

8. Because Deborah Roby, Charonta Roby, and Kimbreuna Roby are minors, a guardian ad litem and Pro Ami hearing are necessary to ensure that their interests are being protected.

9. Two of the minor children, Charonta Roby and Kimbreuna Roby, are represented by A. Wesley Pitters, Post Office Box 1973, Montgomery, Alabama 36102-1973.

10. Defendant has consulted the Plaintiff's counsel regarding this motion, and the Plaintiff has no opposition to it.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests this Honorable Court to appoint a guardian ad litem for the minor children of Ronald Tyrone Roby and to conduct a Pro Ami hearing regarding the settlement of this action to ensure that said settlement is in the best interests of said minor children.

Respectfully submitted,

s/ Gregory A. Brockwell
BRETT A. ROSS (ASB-6771-O76B)
GREGORY A. BROCKWELL (ASB-9949-R49B)

Attorneys for Defendant Benton Express, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following on this the 28th day of April, 2006:

Jere L. Beasley
Labarron N. Boone
Julia A. Beasley
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The following is being served by U.S. Mail:

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s/ Gregory A. Brockwell
Of Counsel